

Legal Responsibilities

Volunteer directors of not-for-profit organizations have an obligation to three segments of society

1. The corporation and its members
2. The government
3. Those with whom the organization interacts

Obligation to the corporation and its members

With regards to **fiduciary duties**, board members are expected to

- Act in good faith and in the best interest of the organization
- Never participate in discussions or decision-making about a matter that may benefit you or someone close to you
- Keep all information confidential

As well, board members have a duty to use the level of skill that may reasonably be expected of someone with their experience and expertise. Before making decisions board members are expected

- To consider all information available to them,
- Inquire into the affairs of the corporation and
- Attend meetings regularly.

In effect, **the courts have said that it is no longer possible to be a passive director**. Lack of knowledge or passive participation will not absolve the director of legal responsibility.

To discharge this obligation to the organization, board members should familiarize themselves with or ensure that they have reliable advice as to the organizations' obligations in the areas of

- Taxation
- Employment
- Human Resources Management
- Services for Business
- Employment Legislation Information
- Any specific legislation related to the work they do and the clients they serve.

Board members should understand the need for **appropriate property and liability insurance** to protect the organization from sudden financial calamity.

Board members of **501(c)3** should understand the additional requirements imposed on the organization by that nonprofit status.

Obligation to Government

There is legislation, both provincial and federal, which affects organizations.

Income Tax Legislation:

Board members are responsible for ensuring that staff income and payroll taxes are withheld and submitted to. If they fail to do so and the organization is unable to pay, board members may be personally liable unless they can show they acted with due diligence. If the organization is in financial trouble, the Internal Revenue Service or a knowledgeable professional should be contacted to determine the prescribed measures that must be taken to avoid personal liability.

Criminal Legislation:

When the corporation is charged with an offense under the Criminal Code, a director may also be charged as a party to the offense if he or she actively participated in, assisted in, or encouraged the crime. Some regulatory matters are of such public importance that they impose penal liability on directors of offending corporations even where they did not know of or participate in the wrongful conduct. Environmental offences are the best example.

Employee Legislation:

Some states impose personal liability on directors for an employee's unpaid wages and vacation pay. These wages may include severance pay, termination and overtime pay.

A director must take all reasonable care to ensure the corporation complies with the state and federal statutes and regulations!

Obligations to those with whom the organization interacts

Civil Liability:

When the corporation has caused damage to a third party, liability is normally limited to the corporation as a whole and board members are not at risk. Personal liability may exist however, if the directors acted outside their authority or participated in the act that caused the damage. Most organizations purchase “third party” liability insurance to protect such participants (as well as the organization itself). The former risk can be wholly or partly addressed by arranging a special type of liability insurance commonly known as “directors and officers” and by ensuring that the bylaws contain a clause permitting the indemnification of directors for such mistakes made in good faith.

